IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

OP.No. 31810 of 2002(J)

PETITIONER:

SMT.FAIRUNEZA, KALEELIL TRADING COMPANY,
PROPRIETORY CONCERN, MARKET ROAD,
KARUNAGAPPALLY, KOLLAM DIST.

BY ADV. SRI.S.ANANTHAKRISHNAN
SRI.N.K.SUBRAMANIAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TAXES, SECRETARIAT, TRIVANDRUM.

2. THE ADDL.SALEX TAX OFFICER III,
OFFICE OF THE SALES TAX OFFICER, KARUNAGAPPALLY.

BY SR.GOVERNMENT PLEADER MR.K.B.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.31810 OF 2002

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE DT.16.9.2002 FOR THE YEAR 1998-99 ISSUED BY THE 2ND RESPONDENT

EXT.P2 TRUE COPY OF THE NOTICE DT.16.9.2002 FOR THE YEAR 1999-00 ISSUED BY THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE NOTICE DT.16.9.2002 FOR THE YEAR 2000-01 ISSUED BY THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE NOTICE DT.16.9.2002 FOR THE YEAR 2001-02 ISSUED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF THE NOTICE DT.16.9.2002 FOR THE YEAR 2002-03 ISSUED BY THE 2ND RESPONDENTS

EXT.P6 TRUE COPY OF THE ORDER OF STAY DT.29.11.1999 IN CMP NO.10434 OF 1999 IN O.P.NO.6142 OF 1999.

/ TRUE COPY /

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.31810 of 2002

Dated, this the 7th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

Petitioner is a registered dealer under the provisions of the Kerala General Sales Tax Act, 1963 ('the Act' for short). It is engaged in the business of edible oil.

2. In this original petition the petitioner seeks the following reliefs. They are as under::

> "1. To issue an appropriate writ direction or order declaring sub-sections (2), (2A) and (2B) of Section 5 of the Act as unconstitutional and void.
>
> 2. Issue a writ of certiorari or any other appropriate writ direction or order calling for the records leading to Ext.P1 to P5 and to quash the same and
>
> 3. Such other and further reliefs that this Hon'ble Court may deem fit in the circumstances of the case to meet the ends of justice."

3. The issues raised and the reliefs sought for by the petitioner in this original petition are identical with the issues raised and considered by a Division Bench of this Court in the case of *Bechu & Company* v. *Asst. Commissioner (Assessment)* (2003 (2) KLT 1009). In the said decision the Court has observed as under:

> "S.5(2), it must be noted, does not depend on whether the selling dealer produces the declaration specified in S.5(2A) and gets the benefit of exemption from payment of sales tax. S.5(2) is independent of sub-s.(2A) and it shifts the liability under S.5(1) in case the manufactured goods are sold by a dealer who is liable to tax under S.5(1) to a registered dealer, who is a brand name holder or a trade mark holder for sale by him under a brand name or a trade mark. Further, if the purchasing dealer, who is a trade mark holder or a brand name holder wants to avoid payment of tax on his purchase

> necessarily he has to issue the declaration specified in S.5(2A). Since there cannot be any dispute that the State Legislature has got the power to determine the point of levy in respect of any goods, that too even in respect of the very same goods depending on the source from which it is derived and particularly in view of the fact that there is no difference in the rate of tax whatever be the point of levy, we are of the view that the provisions of S.5(2) does not impinge Art.14. If under law there is no inhibition in a person using a trade mark or brand name for his products even without registration of the trade mark or brand name under the Trade and Merchandise Marks Act when the legislature uses the expression 'trade mark holder' or 'brand name holder' it is not possible to say that the legislative intention is that the expression 'trade mark holder' or 'brand name holder' only means registered trade mark holder or registered brand name holder. If the classification between general dealers of manufactured goods and dealers of manufactured goods who had patent or trade mark is a reasonable classification which has a rational nexus or connection, the fact that a sub classification was reasonable but has not been made cannot be a ground for declaring the provision unconstitutional. It may be possible for the Legislature to make a sub-classification and pick and choose. Registered Trade mark holders and brand name holders alone for a separate treatment but that cannot be a ground for invalidating the provision. The classification in the instant case is reasonable having a nexus with the object sought to be achieved. Since we are of the view that sub-s.2 is legal and valid we also hold that sub-s.2(B) is also legal and valid."

4. Following the observations made in the aforesaid decision this original petition is also disposed of in the same terms, observations, conditions and directions.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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